

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

CHRIS BENNETT

Plaintiff,

vs.

**HIGHLAND GRAPHICS, INC. and
RON WALL**

Defendants.

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No.: 3:14-cv-2408

DEFENDANTS' BRIEF ON MITIGATION OF DAMAGES JURY INSTRUCTION

COMES NOW, the Defendants, by and through counsel, and submits the following brief on mitigation of damages pursuant to the Court's request. Defendants submitted a proposed Jury Instruction on Mitigation of Damages in their Supplemental Jury Instructions. (Doc. 225)

Defendants' submitted a supplemental instruction as follows:

The plaintiff must make every reasonable effort to minimize or reduce his damages for loss of compensation by seeking employment. This is called mitigation of damages. If you determine that the plaintiff did not make reasonable efforts to obtain another similar job, **or if you find that the plaintiff removed himself from the job market, you must decide whether any damages resulted from the plaintiff's lack of reasonable employment efforts or the removal of himself from the job market.** You must not compensate the plaintiff for any portion of his damages that resulted from his failure to make reasonable efforts to reduce his damages. Therefore, if you determine that the Plaintiff is entitled to lost compensation, you must reduce the loss by:

(Doc. 225, PageID#4089)(emphasis added)

The Sixth Circuit, in the FMLA setting, in Taylor v. Invacare Corporation, 2003 WL 21212674 (6th Cir. 2003) addressed mitigation in footnote 9 stated as follows:

Self-employment, if it is undertaken in good faith and is a reasonable alternative to seeking other comparable employment, may be considered permissible mitigation. See,

e.g., Smith v. Great American Restaurants, Inc. 969 F.2d 430, 438 (7th Cir. 1992)(jury could conclude that plaintiff's opening of her own restaurant was a reasonable venture); Carden v. Westinghouse Electric Corp., 850 F.2d 996, 1005 (3rd Cir. 1988)("[A] self-employed person is 'employed' for the purposes of mitigating damages if establishing a business of his own was a reasonable alternative to finding other comparable employment.")

Therefore, the Defendants Highland Graphics and Ron Wall respectfully request an instruction charging the jury that where establishing a business is reasonable, and taken in good faith, the jury can reach a finding that damages were mitigated.

Respectfully submitted,

/s/ John A. Beam

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of March, 2017, I electronically filed the Brief on Mitigation of Damages with the Clerk of this Court using the CM/ECF system which will automatically send email notification of such filing to the following parties who are CM/ECF participants:

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